

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA, <i>et al.</i>	)	
	)	
Plaintiffs,	)	
	)	
v.	)	05-CV-0329 GKF-SAJ
	)	
TYSON FOODS, INC., <i>et al.</i>	)	
	)	
Defendants.	)	
	)	

**DEFENDANT CARGILL TURKEY PRODUCTION, LLC'S RESPONSES AND OBJECTIONS TO  
PLAINTIFFS' MARCH 17, 2009 SET OF INTERROGATORIES  
AND REQUESTS FOR PRODUCTION OF DOCUMENTS**

Pursuant to Fed. R. Civ. P. 26, 33 and 34, Defendant Cargill Turkey Production, LLP ("CTP") provides the following responses and objections to Plaintiffs' March 17, 2009 Set of Interrogatories and Requests for Production of Documents.

**GENERAL OBJECTIONS**

CTP objects generally to each of Plaintiffs' Interrogatories and Requests for Production as untimely. Pursuant to the Court's Amended Scheduling Order, all factual discovery was required to be completed by April 16, 2009. The instant discovery was served by mail on March 17, 2009. Pursuant to Rules 5(b)(2)(C), 6(d), 33(b)(2), and 34(b)(2)(A) of the Federal Rules of Civil Procedure, CTP's response date is April 20, 2009, more than 4 days after the Court's deadline. Plaintiffs have had the full and fair opportunity to conduct discovery in this case since filing their claims in 2005 – and have in fact already served comprehensive and burdensome discovery – and therefore CTP should not be required to respond to these untimely inquiries.

CTP objects generally to each of Plaintiffs' Interrogatories and Requests for Production as overly broad and misleading to the extent that the Interrogatories and Requests use the term "poultry

waste.” This term is argumentative, inasmuch as poultry material used as fertilizer is not “waste” but is in fact a useful and beneficial material.

CTP objects generally to each of Plaintiffs’ Interrogatories and Requests for Production to the extent they request information prior to 2002 on issues other than corporate knowledge regarding the alleged detrimental environmental effects of land application of “poultry waste,” in conflict with the Court’s repeated rulings concerning the permitted five-year temporal scope of Plaintiffs’ discovery. (See, e.g., 10/24/07 Order at 7, 8: Dkt. No. 1336.)

CTP objects generally to each of Plaintiffs’ Interrogatories and Requests for Production to the extent they seek information or documents protected by attorney-client privilege, work product, or any other doctrine, privilege, or immunity.

CTP objects generally to each of Plaintiffs’ Interrogatories and Requests for Production as overly broad and unduly burdensome to the extent they seek data or information not maintained by CTP in the ordinary course of its business. Further, pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, CTP objects to each of Plaintiffs’ Interrogatories as overly broad and unduly burdensome to the extent they demand that CTP calculate or compile data or information from documents for which the burden of ascertaining the answer would be substantially the same for Plaintiffs as it would be for CTP.

CTP objects generally to each of Plaintiffs’ Interrogatories to the extent that they exceed the limit of twenty-five (25) interrogatories, including all discrete subparts, pursuant to Rule 33(a) of the Federal Rules of Civil Procedure.

CTP objects generally to each of Plaintiffs’ Interrogatories to the extent they seek information that is or may be more appropriately the subject of expert testimony and therefore

exceeds the scope of expert discovery permitted by this Court's scheduling orders and by Fed. R. Civ. P. 26 (b)(4).

### **INTERROGATORIES**

**INTERROGATORY NO. 1:** Please identify each instance (including, where available, specific date, specific location, tonnage of waste applied, acreage upon which it was applied, and STP before application) in which poultry waste generated at your poultry feeding operations, or at poultry feeding operations under contract with you, has been land applied within the IRW as fertilizer, identifying all witnesses to the application and all documents evidencing it.

**ANSWER:** CTP objects to the Interrogatory as duplicative of Interrogatory No. 6 served by Plaintiffs on September 13, 2007.

Subject to and without waiving this objection:

CTP has no additional information responsive to this Interrogatory beyond CTP's supplemental response to Plaintiff's September 13, 2007 Interrogatory 6. CTP refers Plaintiffs to CTP's Supplemental Responses and Objections to Plaintiffs' September 13, 2007 Set of Interrogatories to All Defendants, served on Plaintiffs on May 13, 2008. See also Rule 30(b)(6) Deposition Testimony of Tim Alsup dated June 24 and 25, 2008 at 231:9-246:22 and the Deposition Testimony of Charlie Delap dated August 22, 2008 at 43:7-45:7.

**INTERROGATORY NO. 2:** Please identify each instance (including, where available, specific date, specific location, tonnage of waste applied, acreage upon which it was applied, and STP before application) where poultry waste generated at your poultry feeding operations, or at poultry feeding operations under contract with you, has been land applied within the IRW which has not resulted in any runoff or leaching, identifying all witnesses to the application and all documents evidencing it.

**ANSWER:** CTP objects to this Interrogatory to the extent it assumes Defendant has the burden of proof and to the extent it would require CTP to prove a negative.

Subject to and without waiving these objections:

CTP refers Plaintiffs to its answer to Interrogatory No. 1 above. CTP is not aware of any application of litter in the IRW from a company-owned breeder farm or from a farm of an independent grower under contract with Cargill that resulted in runoff or leaching.

### **REQUESTS FOR PRODUCTION OF DOCUMENTS**

**REQUEST NO. 1:** Please produce all documents identified in the foregoing interrogatories.

**RESPONSE:** CTP refers Plaintiffs to its answer to Interrogatory 1 above. CTP has previously produced documents that may be responsive to this request (see, e.g., the documents bates numbered CARTP095156-CARTP095208, CARTP123734-CARTP123848, and CARTP284267-CARTP284396). CTP has no additional documents responsive to this request.

**REQUEST NO. 2:** Please produce all documents evidencing land application of poultry waste from your poultry feeding operations, or those of your contract growers, in the IRW in which the land application was used as fertilizer, including but not limited to the specific date, specific location, tonnage of waste applied, acreage upon which it was applied, and STP before application.

**RESPONSE:** CTP refers Plaintiffs to its answer to Interrogatory 1 above. CTP has previously produced documents that may be responsive to this request (see, e.g., the documents bates numbered CARTP095156-CARTP095208, CARTP123734-CARTP123848, and CARTP284267-CARTP284396). CTP has no additional documents responsive to this request.

**REQUEST NO. 3:** Please produce all documents evidencing land application of poultry waste from your poultry feeding operations, or those of your contract growers, in the IRW in which the land application of poultry waste has not resulted in any run-off or leaching, including but not limited to the specific date, specific location, tonnage of waste applied, acreage upon which it was applied, and STP before application.

**RESPONSE:** CTP objects to this Request for Production to the extent it assumes Defendant has the burden of proof and to the extent it would require CTP to prove a negative.

Subject to and without waiving these objections:

Compliance with Nutrient Management Plans and Animal Waste Management Plans is evidence of an absence of run-off or leaching of poultry litter. CTP has previously produced documents that may be responsive to this request (see, e.g., the documents bates numbered CARTP095156-CARTP095208, CARTP123734-CARTP123848, and CARTP284267-CARTP284396). CTP has no additional documents responsive to this request.

#### **AS TO OBJECTIONS**

April 20, 2008

RHODES, HIERONYMUS, JONES, TUCKER & GABLE, PLLC

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**CERTIFICATE OF SERVICE**

I certify that on the 20<sup>th</sup> day of April, 2009, I electronically transmitted the attached documents to the following:

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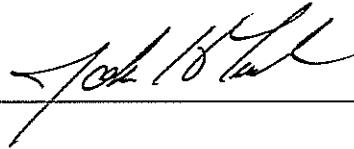
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I also hereby certify that I served the attached documents by United States Postal Service, proper postage paid, on the following:

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